

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
LINDA M. GALARZA, R.N.,	:	<u>LS 0810081 NUR</u>
RESPONDENT.	:	

[Division of Enforcement Case # 06 NUR 123 & 08 NUR 363]

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

Linda M. Galarza, R.N.
5712 W. Vliet Street, #A
Milwaukee, WI 53208

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Board of Nursing
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

This disciplinary proceeding was commenced by the filing and service of a Complaint and Notice of Hearing on October 8, 2008 regarding DOE case number 06 NUR 123. A hearing is scheduled for January 26 and 27, 2009. The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision in both matters, subject to the approval of the Board of Nursing. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Linda M. Galarza, R.N., Respondent, date of birth October 22, 1978, is licensed by the Wisconsin Board of Nursing as a registered nurse in the state of Wisconsin pursuant to license number 151416, which was first granted July 21, 2005. Respondent's license was summarily suspended on November 6, 2008 and remains suspended to this date.

2. Respondent's last address reported to the Department of Regulation and Licensing is 5712 W. Vliet Street, #A Milwaukee, WI 53208.

COUNT I

3. During 2005, Respondent was employed as a phlebotomist at St. Joseph's Hospital in Milwaukee. While employed at St. Joseph's, Respondent stole controlled substances from St. Joseph's and injecting them intravenously. Respondent had been employed at Oral Surgery Associates in Mequon, prior to being employed at St. Joseph's. On April 14, 2005, Respondent returned to Oral Surgery Associates and took a vial of Fentanyl and two syringes filled with Fentanyl without anyone's knowledge or permission and without the order of a practitioner. Fentanyl is a schedule II controlled substance.

COUNT II

4. During 2006, Respondent was employed as a registered nurse (RN) by Covenant Healthcare System, Inc., and worked as an RN at St. Joseph Regional Medical Center in Milwaukee, Wisconsin.

5. During the early morning hours of March 22, 2006, Respondent was one of the nurses working in the Emergency Department where drugs were kept in a locked automatic dispensing unit (ADU) in the medication room. A nurse would gain access to withdraw drugs from the ADU by swiping an identification card with a magnetic stripe past a reading head and entering a password. The nurse would then enter the patient's code number into the ADU and withdraw the drug to administer. Once a nurse had swiped the identification card and entered the password, the ADU would remain open until either the nurse logged off or one minute would pass without any keyboard activity, whichever occurred first.

6. Just after midnight the morning of March 22:

- a. Another nurse entered the medication room, swiped her card in the ADU, entered her password, entered a patient's identification number and withdrew a drug for the patient.
- b. That nurse did not log off the system before leaving the medication room.
- c. A digital recording from the security video camera aimed at the ADU showed that Respondent entered the medication room and approached the ADU within a minute of when the first nurse left the ADU.
- d. Respondent did not swipe her identification card in the ADU but entered a patient identification number and removed a 2mg vial of Dilaudid (hydromorphone), a schedule II controlled substance, and a 7.5mg tablet of Vicodin (hydrocodone), a schedule III controlled substance. The ADU record charged the drugs' withdrawal to the first nurse because it was still open based on the swipe of her identification card and the entry of her password.
- e. Respondent neither gave the drugs to the patient nor made any record of giving either drug to a patient. Respondent diverted the controlled substances for illicit purposes.

COUNT III

7. On March 23, 2006, supervisors at St. Joseph Regional Medical Center reviewed the ADU's record of Respondent's withdrawals of Dilaudid during February and March 2006 and compared the withdrawals with the charts of the patients for whom the Dilaudid was purportedly withdrawn. It was determined that:

- a. On multiple occasions, Respondent withdrew Dilaudid for patients for whom there were no physicians' orders for the patient to receive the drug.
- b. On multiple occasions, Respondent did not record that the Dilaudid was given to the patient for whom it was purportedly withdrawn.
- c. Respondent had written several orders for patients to receive Dilaudid without the authorization of a physician or other practitioner.

8. Respondent diverted the controlled substances for illicit purposes.

9. On April 10, 2006, following the investigation, Respondent's employment by Covenant Healthcare System, Inc. at St. Joseph Regional Medical Center was terminated based on the theft of narcotics.

COUNT IV

10. From April 25, 2006 through October 7, 2008, Respondent was employed by Brookfield Rehabilitation & Specialty Care (BRSC), a nursing home in Brookfield, Wisconsin. On the latter date, Respondent was the house supervisor and did not carry keys for the medication carts on the units. However, Respondent had access to a set of back up keys which was kept in the DON's office for emergencies. On that day:

- a. While the 2 West nurse, was on lunch break, Respondent used the back up keys to remove a resident's card of 40mg oxycontin (a schedule II controlled substance) and the count record for the card from the 2 West medication cart narcotic box. During the shift, another staff person found the resident's card, with all oxycontin removed, in the security disposal bin.
- b. A little later, Respondent told the 2 West nurse that the Advanced Practice Nurse Prescriber had issued a new order for Dilaudid (a schedule II controlled substance) for a first floor resident and pharmacy had told Respondent they couldn't send any right away. Respondent noted that a 2 West resident had two cards of Dilaudid

and asked the 2 West nurse to loan her a card that contained 22 Dilaudid. The nurse gave the card and the count record for the card to Respondent who left the unit with them.

c. The DON determined that the Advanced Practice Nurse Prescriber had not written any new orders for Dilaudid that day, no one in pharmacy had been contacted about a new order for Dilaudid and no pharmacy staff had told Respondent to borrow Dilaudid from a different resident.

d. The DON requested that the police be contacted and a City of Brookfield police officer arrived. At that point, Respondent was interviewed by the DON with the officer present.

1) Respondent falsely denied that she had keys for the 2 West medication cart and falsely denied that she had taken the Oxycontin from the cart.

2) Regarding the Dilaudid card she received from the 2 West nurse, Respondent falsely said she had destroyed the Dilaudid, the count record for the Dilaudid was in the supervisor's office and she had put the empty bubble pack card for the Dilaudid in the security disposal bin.

e. The count record for the Dilaudid was not in the supervisor's office and no empty Dilaudid bubble pack card was in the security disposal bin.

f. The officer searched Respondent's personal bag in the presence of the DON and found a bubble pack card of Dilaudid with 19 doses remaining. The narcotic count sheets for the Oxycontin and the Dilaudid were found on Respondent's clipboard. The back up keys for the 2 East and 2 West medication carts were found in Respondent's pockets. The officer reported that Respondent appeared to have fresh needle track marks on both arms. Respondent denies that she had any needle track marks.

COUNT V

11. On January 2, 2009, Respondent went to the office of Oral Surgery Associates in Mequon. Respondent had been employed there a few years ago and had recently applied for a position as a dental assistant. On that day, she took her baby and while the clinic staff was looking at her baby, Respondent excused herself to use the bathroom. During that time, she entered the room where narcotics are kept, and took a 20 ml. vial of Fentanyl and a syringe filled with 100 mcg of Fentanyl, without anyone's knowledge or permission and without the order of a practitioner. Fentanyl is a schedule II controlled substance.

12. On January 5, 2009, Respondent returned to Oral Surgery Associates and took another 20 ml. vial of Fentanyl, without anyone's permission and ran out of the office.

CONCLUSIONS OF LAW

1. The Wisconsin Board of Nursing has jurisdiction over this matter pursuant to Wis. Stat. § 441.07 and authority to enter into this stipulated resolution pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by diverting controlled substances, has obtained drugs other than in the course of legitimate practice and as otherwise prohibited by law, which is misconduct or unprofessional conduct as defined by Wis. Admin. Code § N 7.04(2) and subjects her to discipline pursuant to Wis. Stat. § 441.07(1)(d). [All Counts]

3. Respondent's behavior violated the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public, which is misconduct or unprofessional conduct as defined by Wis. Admin. Code § N 7.04(intro.) and subjects her to discipline pursuant to Wis. Stat. § 441.07(1)(d). [Count III]

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order:

SUSPENSION

A.1. The license of Linda M. Galarza, R.N., to practice as a registered nurse in the State of Wisconsin is SUSPENDED for an indefinite period.

- A.2. The privilege of Linda M. Galarza, R.N., to practice as a registered nurse in the State of Wisconsin under the authority of another state license pursuant to the Nurse Licensure Compact is also SUSPENDED for an indefinite period.
- A.3. During the pendency of this Order and any subsequent related orders, Respondent may not practice in another state pursuant to the Nurse Licensure Compact Regulation under the authority of the Wisconsin license, unless Respondent receives prior written authorization to do so from both the Wisconsin Board of Nursing and the regulatory board in the other state.
- A.4. Respondent shall mail or physically deliver all indicia of nursing licensure to the Department Monitor within 14 days of the effective date of this Order.
- A.5. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active nursing for every year the suspension is stayed, the Board may grant a petition by the Respondent under paragraph D.4. for return of full licensure.
- A.6. The Board may, on its own motion or at the request of the Department Monitor, grant full licensure at any time.

STAY OF SUSPENSION

- B.1. **The suspension shall not be stayed for the first year, beginning November 6, 2008 the date Respondent's license was summarily suspended**, but any time after that year, the suspension shall be stayed upon Respondent petitioning the Board and providing proof, which is determined by the Board or its designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.
- B.2. The Board or its designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Board may, in conjunction with the removal of any stay, prohibit Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:
- (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Board or its designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Board or its designee.
- B.5. If Respondent requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment program at a treatment facility (Treater) acceptable to the Board or its designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater from the Board or its designee.

- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than twice per month for the first year. Therapy may end only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collection sites current releases complying with state and federal laws. The releases shall allow the Board, its designee, and an employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Respondent's treatment with, and provide copies of treatment records to, Treater and the Board or its designee.
- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation.
- C.11. Respondent shall report all prescription medications and drugs taken by Respondent to Treater and the Department Monitor within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Board or its designee, Respondent shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program"). A list of Approved Programs is available from the Department Monitor.
- C.13. At the time Respondent enrolls in the Approved Program, Respondent shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a substantial violation of this Order. The requirements shall include:
- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
 - (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.14. The Approved Program shall require the testing of urine specimens at a frequency of not less than 56 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Board or its designee after receiving a petition for modification as required by D.4., below.

- C.15. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Board or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.16. In addition to any requirement of the Approved Program, the Board or its designee may require Respondent to do any or all of the following: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
- C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11.

Practice Limitations

- C.19. Respondent shall not work as a nurse in a setting in which Respondent has access to controlled substances.
- C.20. Respondent shall practice only under the direct supervision of a licensed nurse or other licensed health care professional approved by the Board or its designee and only in a work setting pre-approved by the Board or its designee. Respondent may not work in a home health care, hospice, pool nursing, or agency setting.
- C.21. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a nurse or care giver or provides health care, currently or in the future.
- C.22. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active nursing practice worked during that quarter.
- C.23. Respondent shall report to the Board any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

- D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Wisconsin Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of their Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with current address and home telephone number.

Change of Treater or Approved Program by Board

- D.3. If the Board or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Board or its designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.4. Respondent may petition the Board for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater expressly supporting the specific modification sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

- D.5. Respondent shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from the program for non-payment is a violation of this Order.

Costs of Proceeding

- D.6. Respondent shall pay costs of \$1,295.00 to the Department of Regulation and Licensing within 365 days of this Order. In the event Respondent fails to timely submit any payment of costs, Respondent's license SHALL BE SUSPENDED without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for separate disciplinary action pursuant to Wis. Stat. § 441.07.

Wisconsin Board of Nursing

By: Marilyn Kaufmann
A Member of the Board

4/2/09
Date

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
LINDA M. GALARZA, R.N.,	:	<u>LS 0810081 NUR</u>
RESPONDENT.	:	

[Division of Enforcement Case # 06 NUR 123 & 08 NUR 363]

It is hereby stipulated and agreed, by and between Linda M. Galarza, R.N., Respondent; Bradley G. Kennedy or Murphy Desmond, S.C., attorneys for Respondent and John R. Zwieg, attorney for the Complainant, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of pending disciplinary proceedings against Respondent’s licensure by the Division of Enforcement. Respondent consents to the resolution of this matter by stipulation and without a hearing.
2. Respondent understands that by signing this Stipulation, she voluntarily and knowingly waives her rights, including the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.
3. Respondent has been provided an opportunity to obtain advice of legal counsel prior to signing this Stipulation.
4. Respondent neither admits nor denies the allegations of this matter, but agrees to the adoption of the attached Final Decision and Order by the Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's Order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. Attached to this Stipulation are Respondent’s current wall and wallet registration certificates. If the Board accepts the Stipulation, upon issuance of an Order, Respondent’s license may be reissued pursuant to the terms of the Order. If the Board does not accept this Stipulation, Respondent's certificates shall be returned to the Respondent with a notice of the Board's decision not to accept the Stipulation.
7. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as a case advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent or her attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such case advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
8. Respondent is informed that should the Board adopt this Stipulation, the Board’s Final Decision and Order is a public record and will be published in accordance with standard Department procedure.
9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

Respondent
5712 W. Vliet Street, #A
Milwaukee, WI 53208

Bradley G. Kennedy Date
Murphy Desmond, S.C.
Attorneys for Respondent
P.O. Box 2038
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John R. Zweg
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Date